
STATUTORY INSTRUMENTS

1991 No. 2887

The Disability Working Allowance (General) Regulations 1991

PART IV

MEMBERSHIP OF A FAMILY

Membership of the same household

10.—(1) Except in a case to which paragraph (2) applies, where a claimant or any partner is treated as responsible for a child or young person by virtue of regulation 9 (circumstances where a person is treated as responsible or not responsible for another), that child or young person and any child of that child or young person shall be treated as a member of the claimant's household.

(2) A child or young person shall not be treated as a member of the claimant's household in any case where the child or young person—

- (a) is a patient or in residential accommodation on account of physical or mental handicap or physical or mental illness and has been so accommodated for the 12 weeks immediately before the date of claim and is no longer in regular contact with the claimant or any member of the claimant's household; or
- (b) is in a foster placement, or in Scotland boarded out, with the claimant or his partner prior to adoption; or
- (c) is in a foster placement, or in Scotland boarded out, with the claimant or his partner under a relevant enactment; or
- (d) has been placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations 1983(1) or the Adoption Agencies (Scotland) Regulations 1984(2) ; or
- (e) is detained in custody under a sentence imposed by a court.

(3) In this regulation—

- (a) "patient" means a person (other than a person who is serving a sentence imposed by a court in a prison or youth custody institution or in Scotland, young offender's institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(3) ;
- (b) "relevant enactment" means the Army Act 1955(4) , the Air Force Act 1955(5) , the Naval Discipline Act 1957(6) , the Matrimonial Proceedings (Children) Act 1958(7) , the Social Work (Scotland) Act 1968(8) , the Family Law Reform Act 1969(9) , the Children and

(1) S.I. 1983/1964.

(2) S.I. 1984/988.

(3) S.I. 1975/555; the relevant amending instruments are S.I. 1977/1693 and 1987/1683.

(4) 1955 c. 18.

(5) 1955 c. 19.

(6) 1957 c. 53.

(7) 1958 c. 40.

(8) 1968 c. 49.

(9) 1969 c. 46.

Young Persons Act 1969(10) , the Matrimonial Causes Act 1973(11) , the Guardianship Act 1973(12) , the Children Act 1975(13) , the Adoption Act 1976(14) , the Domestic Proceedings and Magistrates' Courts Act 1978(15) , the Adoption (Scotland) Act 1978(16) , the Child Care Act 1980(17) and the Children Act 1989(18) ;

- (c) “residential accommodation” means accommodation for a person whose stay in the accommodation has become other than temporary which is provided under—
- (i) sections 21 to 24 and 26 of the National Assistance Act 1948(19) (provision of accommodation); or
 - (ii) section 21(1) of, and paragraph 1 or 2 of Schedule 8 to, the National Health Service Act 1977(20) (prevention, care and after-care) or, in Scotland, for the purposes of section 27 of the National Health Services (Scotland) Act 1947(21) (prevention of illness and after-care) or under section 59 of the Social Work (Scotland) Act 1968(22) (provision of residential and other establishments) or under section 7 of the Mental Health (Scotland) Act 1984(23) (function of local authorities).

(10) 1969 c. 54.

(11) 1973 c. 18.

(12) 1973 c. 29.

(13) 1975 c. 72.

(14) 1976 c. 36.

(15) 1978 c. 22.

(16) 1978 c. 28.

(17) 1980 c. 5.

(18) 1989 c. 41.

(19) 1948 c. 29; section 21 was amended by the Local Government Act 1972 (c. 70), Schedule 23, paragraphs 1 and 2 and Schedule 30; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 44 and Schedule 5; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 5; the Health Service Act 1980 (c. 53), Schedule 1, Part I, paragraph 5. Section 22 was amended by the Social Work (Scotland) Act 1968 (c. 49), section 87(4) and Schedule 9, Part I; the Supplementary Benefits Act 1976 (c. 71) Schedule 7, paragraph 3; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the Social Security Act 1980 (c. 30), section 20, Schedule 4, paragraph 2(1) and Schedule 5, Part II, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(a) and the Social Security Act 1986 (c. 50), section 86, Schedule 10, paragraph 32. Section 24 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1(1); the National Health Service (Scotland) Act 1972 (c. 58), Schedule 6, paragraph 82; the Local Government Act 1972 (c. 70), Schedule 23, paragraph 2; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 45, the Housing (Homeless Persons) Act 1977 (c. 48), Schedule and the National Health Service and Community Care Act 1990 (c. 19), section 66(1), Schedule 9, paragraph 5(4). Section 26 was amended by the Health Services and Public Health Act 1968 (c. 46), section 44 and Schedule 4 and the Social Work (Scotland) Act 1968 (c. 49), Schedule 9, Part I and applied by section 87(3) of that Act; the Local Government Act 1972 (c. 70), Schedule 23, paragraph 2; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule and the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(b).

(20) 1977 c. 49; paragraph 1(1) was amended by the Education Reform Act 1988 (c. 40), section 237, Schedule 12, paragraph 22; paragraphs 1(2) and 2(5) of Schedule 8 were repealed by section 30 of, and Schedule 10, Part I to, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) and paragraphs 2(1) to (3) were amended by the Mental Health Act 1983 (c. 20), section 148 and Schedule 4.

(21) 1947 c. 27, as applied by section 1(4)(c) of the Social Work (Scotland) Act 1968 (c. 49); section 27 is continued in force for the purposes of section 1(4)(c) by paragraph 15 of Schedule 15 to the National Health Service (Scotland) Act 1978 (c. 29).

(22) 1968 c. 49.

(23) 1984 c. 36.